BRENNAN CENTER FOR JUSTICE

Justice at Stake campaign

July 31, 2009

Mr. Corbin Davis
Clerk
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

Re: ADM File No. 2009-04

Dear Clerk Davis:

The Brennan Center for Justice at NYU School of Law[1] and the Justice at Stake Campaign[2] commend the Justices of the Michigan Supreme Court for their leadership regarding disqualification practice in Michigan. In particular, we applaud the Court's initiative on recusal reform, contained in the Court's March 18, 2009 Order concerning proposed judicial disqualification rules (Administrative File No. 2009-04). As a growing number of state judiciaries reconsider their disqualification practices, Michigan has an opportunity to provide national leadership even as it serves the demands of its own citizens for equal and impartial justice. In connection with those proposals, we respectfully submit the following comments.

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[1] The Brennan Center is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. Through the Brennan Center's Fair Courts Project we work to preserve fair and impartial courts and their role as the ultimate guarantor of equal justice in our constitutional democracy. Our research, public education, and advocacy in this area focus on improving selection systems (including elections), increasing diversity on the bench, promoting measures of accountability that are appropriate for judges, and keeping courts in balance with other governmental branches.

[2] Justice at Stake is a nationwide, nonpartisan partnership of more than 50 judicial, legal, and citizen organizations. Its mission is to educate the public and work for reforms to keep politics and special interests out of the courtroom — so judges can do their job protecting the Constitution, individual rights, and the rule of law. The arguments expressed in this letter do not necessarily represent the opinion of every Justice at Stake partner or board member.

Introduction

In the U.S. Supreme Court's 2002 decision in *Republican Party of Minnesota v. White*, Justice Anthony Kennedy wrote that states "may adopt recusal standards more rigorous than due process requires, and censure judges who violate these standards."[3] Justice Kennedy's comments came amid an unprecedented upsurge of special interest pressure in court elections — creating an impression among Americans and many of their judges that justice is "for sale." Strong and effective recusal rules are central to ensuring that courts remain accountable to the law instead of political pressure.[4] As the Conference of Chief Justices wrote in its *amicus* brief in *Caperton v. A.T. Massey Coal Co.*:

> As judicial election campaigns become costlier and more politicized, public confidence in the fairness and integrity of the nation's elected judges may be imperiled. Disqualification is an increasingly important tool for assuring litigants that they will receive a fair hearing before an impartial tribunal . . . .[5]

The Honorable Thomas R. Phillips, retired Chief Justice of the Supreme Court of Texas, recently echoed the point, noting that, "now as never before, reinvigorating recusal is truly necessary to preserve the court system that Chief Justice Rehnquist called the 'crown jewel' of our American experiment."[6]

The Brennan Center and the Justice at Stake Campaign have urged states to adopt recusal standards that will reassure citizens that their courts will be fair and impartial, in fact and in appearance. We are part of a national coalition of concerned civic and legal leaders promoting substantive and procedural reforms, seeking in particular to reduce situations where judicial campaign conduct, campaign cash, or special interest pressure could cast the impartiality of judges into doubt. In 2008, the Brennan Center issued a report, *Fair Courts: Setting Recusal Standards*, which details the increasing threats to the impartiality of state courts and the ways in which robust recusal standards may help to safeguard due process and public trust in the judiciary.[7] The Brennan Center and Justice at Stake have also filed *amicus curiae* briefs in cases involving impartial courts and recusal standards — including, most recently, in the landmark U.S. Supreme Court case of *Caperton v. A.T. Massey Coal Co.*[8]

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[3] 536 U.S. 765, 794 (2002) (Kennedy, J., concurring).

[4] Technically, there is a difference between disqualification and recusal: disqualification is mandatory, recusal is voluntary. This difference is often blurred, however, because disqualification essentially functions as recusal in the many jurisdictions in which judges adjudicate challenges to their own qualification to preside in a given case.

[5] *Caperton v. A.T. Massey Coal Co.*, Brief of Amici Curiae, The Conference of Chief Justices, in Support of Neither Party 4 (U.S. No. 08-22), *available at* http://tinyurl.com/n7smjz.

[6] James Sample, David Pozen & Michael Young, *Fair Courts: Setting Recusal Standards* 3 (2008) ("*Setting Recusal Standards*"), *available at* http://www.brennancenter.org/content/resource/fair_courts_setting_recusal_standards/.

[7] *See id.* at 8-35.

[8] 129 S. Ct. 2252 (2009).

It is worth noting that firmer recusal standards enjoy overwhelming public support. For example, a February 2009 national poll conducted for Justice at Stake by Harris Interactive revealed that more than 80 percent of the public believes judges should avoid cases involving major campaign supporters. And 81 percent believe a disinterested judge should have the last word on recusal motions, not the judge whose objectivity is being challenged.[9]

We respectfully submit the following comments regarding the alternative proposed disqualification rules (the "Alternatives") presently under consideration by this Court. As detailed below, though each of the Alternatives contains some useful components, it is our view that Alternative C presents the best option among the three proposed rules.[10] In light of the attention to disqualification rules and policy occasioned by this Court's welcome present initiative, we also invite the Court to consider a number of specific ways in which Alternative C and Michigan's disqualification regime in general could be strengthened even further.

Alternative C Is the Best of the Three Proposed Rules

We recognize that adoption of one of the three Alternatives (in their present form or as modified) is but one of several options open to this Court, and that this Court may, instead, approve a proposal not included among the three Alternatives, choose to forego any change to existing court rules, or implement guidance in the form of an unenforceable internal guideline.[11] Nevertheless, in the interests of transparency and the promotion of public confidence in the judicial system, and in light of increasing pressures on the judiciary (including the growing influence of money on judicial elections[12]), we respectfully urge this Court to promulgate a public, enforceable rule rather than a non-enforceable guideline or no guideline at all, and we submit that, of the three Alternatives, Alternative C represents the best starting point.

The grounds for disqualification should be non-exclusive.

As the recent decision in *Caperton* illustrates, the jurisprudence on disqualification standards and requirements continues to evolve. Moreover, ongoing changes in the legal landscape governing campaign finance and election conduct may give rise to novel circumstances in which disqualification is appropriate. It is therefore not prudent — either from the

[9] Justice at Stake Campaign, Press Release, Poll: Huge Majority Wants Firewall Between Judges, Election Backers (Feb. 22, 2009), *available at* http://www.justiceatstake.org/node/125.

[10] Citations to "Alternative A," "Alternative B," and "Alternative C" herein refer to the three alternatives so-identified in this Court's March 18, 2009 Order, ADM File No. 2009-04.

[11] Order, ADM File No. 2009-04, at 10-11 (Mich. Mar. 18, 2009) (Weaver, J., concurring).

[12] *See, e.g.*, James Sample, Lauren Jones & Rachel Weiss, *The New Politics of Judicial Elections 2006* (2007), *available at* http://www.brennancenter.org/content/resource/the_new_politics_of_judicial_elections_2006/.

standpoint of rule-making efficiency or from that of public policy or due process — to restrict the grounds of disqualification to a closed and inflexible set of circumstances. Because Alternative C, alone, avoids this pitfall, it is preferable to Alternatives A and B.

Alternative A expressly provides that only the enumerated conditions require disqualification, seeking to forecast every potential situation in advance.[13] Alternative B similarly offers an exclusive list of grounds for disqualification, although the inclusion on this list of a provision permitting disqualification wherever a justice's "impartiality might objectively and reasonably be questioned" offers a limited opportunity to accommodate evolving jurisprudence and ethical guidance.[14]

Both of these proposed rules stand in stark contrast to the current version of MCR 2.003, which provides a non-exhaustive list of grounds for disqualification,[15] and Alternative C, which sets forth a non-exclusive, unified list of grounds for disqualification that would apply to both judges and justices.[16] As to non-exclusivity of reasons requiring disqualification, Alternative C is preferable.

The grounds for disqualification should include the appearance of impartiality.

As the U.S. Supreme Court observed in *Caperton*, a judge's disqualification may be required not only where actual bias can be shown but also where the serious risk or "probability of actual bias rises to an unconstitutional level."[17] However, the requirements of constitutional due process set "'only the outer boundaries of judicial disqualifications.'"[18] As the *Caperton* Court observed, many states have gone further and implemented judicial reforms to eliminate "even the appearance of partiality."[19] Indeed, forty-seven states have incorporated a provision into their judicial conduct codes requiring a judge to disqualify him- or herself in proceedings in which the judge's impartiality might reasonably be questioned, and federal judges and the 2007 Model Code of Judicial Conduct of the American Bar Association ("ABA") follow the same standard.[20] Only Michigan and two other states have yet to explicitly adopt such a provision.[21]

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[13] Alternative A (Proposed MCR 2.003-SC).

[14] Alternative B (Proposed MCR 2.003-SC(B)). As discussed below, the "impartiality" provision in Alternative B is problematic for other reasons.

[15] MCR 2.003(B).

[16] Alternative C (Proposed MCR 2.003(C)(1)).

[17] 129 S. Ct. at 2265.

[18] *Id.* at 2267 (citation omitted).

[19] *Id.* at 2266.

[20] *Setting Recusal Standards* at 17. The standard has proved workable: courts have construed or applied this standard in hundreds if not thousands of decisions to date.

[21] *Id.* Arguably, many of the grounds for disqualification identified in the current version of MCR 2.003(B) already implicitly recognize the notion that disqualification is appropriate in circumstances where impartiality might reasonably be questioned. *See, e.g.*, MCR 2.003(B)(2), (5).

By adopting a standard that requires disqualification not simply when there is evidence of bias but when a judge's impartiality might reasonably be questioned *whether or not actual bias exists*, the vast majority of states have recognized that the appearance of impartiality must be safeguarded just as impartiality itself is.[22] Adoption of this standard likewise recognizes that, as the *Caperton* Court explained, a judge's subjective inquiry into actual bias "is not one that the law can easily superintend or review"[23] and that other, more objective standards that do not turn on proof of private motives are therefore required to guard against potential bias.

Alternative A contains no provision calling for disqualification where a judge's impartiality might reasonably be questioned.[24] Alternative B contains such a provision but sets several important — and, we believe, problematic — limitations on the evidence that can provide a basis for disqualification under this clause.[25] Alternative C includes the same standard as Alternative B but does so without encumbering the provision with inappropriate limitations.[26] Alternative C is also the only one of the three proposals that would extend this new provision to all Michigan judges. Consequently, Alternative C's provisions regarding the appearance of impartiality are preferable.

All disqualification decisions should be in writing and should explain the grounds for the decision.

It is critically important — for litigants, for the courts, and for the public at large — that disqualification decisions offer transparent and reasoned decision-making. As explained in the Brennan Center's recusal report, a failure to explain recusal decisions "allows judges to avoid conscious grappling with the charges made against them" and "offends not only a basic tenet of legal process, but also a basic tenet of liberal democracy — that officials must give public reasons for their actions in order for those actions to be legitimate."[27] Such a failure also makes it far more difficult for those reviewing a specific disqualification decision to understand the underlying rationale or facts, and denies other judges, justices, and courts both precedent for use in other cases and the chance to build on this precedent in developing a more refined body of disqualification jurisprudence. Finally, in a state in which judges or justices are subject to election or re-election, a failure to explain disqualification decisions deprives the public of valuable information concerning how those judges or justices address challenges to a central component of their judicial fitness: their impartiality.

On this measure, both Alternatives A and B fall short, as neither requires written explanations of disqualification decisions. Indeed, Alternative B affirmatively prohibits

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[22] Michigan's Code of Judicial Conduct already recognizes that the *appearance* and the *actuality* of misconduct may be of equal importance with its prescription that judges avoid not simply impropriety but the appearance of impropriety in all activities. Michigan Code of Judicial Conduct, Canon 2.

[23] 129 S. Ct. at 2263.

[24] Alternative A (Proposed MCR 2.003-SC).

[25] Alternative B (Proposed MCR 2.003-SC(B)(2)).

[26] Alternative C (Proposed MCR 2.003(C)(1)(b)).

[27] *Setting Recusal Standards* at 32 (footnote omitted).

statements of rationale where the Chief Justice or the Court, upon review of a once-denied motion for disqualification, decides to deny that motion yet again.[28]

Although it does not clearly require that disqualification decisions be issued in writing, Alternative C requires that both the challenged justice and, if the matter is reviewed by the Court, the Court itself explain the reasons behind any disqualification decision.[29] Alternative C's solution, while not clearly requiring the issuance of written disqualification decisions and not extending the requirements for written and reasoned disqualification decisions to all judges covered by MCR 2.003 (as we believe would be appropriate), represents a significant step in the direction of promoting transparency and accountability. Among the current proposals, Alternative C's provisions regarding the rationale for disqualification decisions is the best — although the Court should consider strengthening this proposal.

If a challenged justice is permitted to decide his or her own disqualification motions, there should be a mechanism to review such decisions de novo *and in a timely manner.*

Permitting a judge whose objectivity is challenged to decide his or her own disqualification motions may undermine public confidence in the impartiality and legitimacy of the judicial process. On the other hand, a challenged judge may possess the best knowledge of the facts at issue.

In light of these tensions, Illinois and several other states require that motions for disqualification be independently adjudicated.[30] We believe that such an approach enhances procedural integrity and fosters increased public trust in the judicial system. In those states, including Michigan, where a judge is permitted to decide his or her own recusal challenge, it is important that alternative safeguards against partiality be put in place to achieve those same goals.

One such safeguard is to ensure that every decision denying disqualification be reviewed by a disinterested judge. MCR 2.003(C)(3) already allows such review of a judge's decision denying disqualification by permitting a party to ask for the matter to be referred to another judge.[31] Alternatives B and C would similarly permit parties to request review of a Supreme Court justice's decision denying disqualification, although Alternative B, unlike Alternative C and the current version of MCR 2.003, limits such requests for review to the original moving

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[28] *Compare* Alternative A (Proposed MCR 2.003-SC) *with* Alternative B (Proposed MCR 2.003-SC(c)(3), (4)).

[29] Alternative C (Proposed MCR 2.003(D)(3)(b)) (requiring that a challenged justice "decide the issues and publish his or her reasons" while requiring the entire Court to simply "decide the motion for disqualification" and "include the reasons").

[30] *See, e.g.*, Ariz. R. Crim. P. 10.1; 725 Ill. Comp. Stat. § 5/114-5(d); 735 Ill. Comp. Stat. § 5/2-1001(a)(3); Ohio Rev. Code Ann. § 2701.03; Nev. Rev. Stat. Ann. § 1.225.

[31] MCR 2.003(C)(3).

party.[32] Alternative A offers parties no recourse if the challenged justice declines a motion for disqualification.[33]

Review of a disqualification decision by a disinterested judge or justice may offer little genuine protection against partiality if that review is conducted under a perfunctory abuse-of-discretion standard. *De novo* review of disqualification decisions — which is provided for in the current version of MCR 2.003 and in both Alternatives B and C[34] — thus represents another important means by which to ensure the integrity of the adjudicative process for litigants and the public at large.

Finally, the benefits of *de novo* review of disqualification decisions will be illusory if the review process itself does not proceed in a timely manner. Neither Alternative B nor Alternative C sets forth a specific timeline according to which parties may seek such review,[35] but insofar as Alternative C permits parties to "move" for review of decisions denying disqualification,[36] MCR 7.313 — which governs motions before the Supreme Court — establishes a useful timetable.

An effective disqualification rule need not carve out special protections for justices' campaign speech.

In *Republican Party of Minnesota v. White* the U.S. Supreme Court held that a clause in the Minnesota Code of Judicial Conduct prohibiting judicial candidates from announcing their views on disputed legal or political issues unconstitutionally abridged the First Amendment rights of those candidates. Although the majority opinion recognized that judicial impartiality might represent a sufficiently compelling state interest to justify restraints on speech in certain circumstances, the Supreme Court concluded that the clause in question was not narrowly tailored to address that interest.[37]

White concerned a restriction placed on judges or judicial candidates insofar as they were campaigning for judicial office. It did not suggest, much less hold, that a judicial candidate's free speech rights trump due process requirements once that candidate has taken the bench. Nor did *White* otherwise restrict how a state may choose to promote and protect the

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[32] *Compare* Alternative B (Proposed MCR 2.003-SC(C)(3)) *with* Alternative C (Proposed MCR 2.003(D)(3)(b)).

[33] Alternative A (Proposed MCR 2.003-SC). That this practice may mirror that of the U.S. Supreme Court is of only passing relevance, since the review of disqualification decisions plays a far more important role furthering public confidence in the independence and impartiality of the judiciary in a system in which justices run for election and re-election than in a system in which justices are appointed for life.

[34] MCR 2.003(C)(3); Alternative B (Proposed MCR 2.003-SC(C)(3)); Alternative C (Proposed MCR 2.003(D)(3)).

[35] *Compare* Alternative B (Proposed MCR 2.003-SC(C)(3)) *with* Alternative C (Proposed MCR 2.003(D)(3)).

[36] Alternative C (Proposed MCR 2.003(D)(3)(b)).

[37] 536 U.S. at 775-81.

impartiality of its courts through disqualification rules. To the contrary, as Justice Kennedy suggested in his concurrence in *White*, states concerned that unfettered judicial campaign speech may undermine the real and perceived impartiality of the courts are free to adopt disqualification standards "more rigorous than due process requires, and censure judges who violate these standards."[38]

Precluding disqualification based upon a judicial candidate's campaign speech — as Alternative B proposes to do[39] — is thus not required under *White*. It would also be unwise: recognizing the importance of judicial candidates' First Amendment rights does not mean that those rights should be elevated above the due process rights of litigants — or the state's own interest in an impartial judiciary. Indeed, Alternative B directly conflicts with the ABA's 2007 Model Code of Judicial Conduct, which calls for disqualification when:

> The judge, while a judge or judicial candidate, [ ] has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.[40]

Alternatives A and C are both silent as to judicial campaign speech, and are both preferable to Alternative B on that score. As between the two, Alternative C — which provides for disqualification where a judge's impartiality might objectively and reasonably be questioned without any of the limitations included in Alternative B — permits consideration of judicial campaign speech in ways that Alternative A, which lacks that provision, does not.[41] Alternative C therefore represents the best option among the three proposals on this point.

The grounds for disqualification of Michigan Supreme Court justices should mirror those of Michigan judges.

Absent compelling justification, the definition and guarantee of impartiality embodied in Michigan's disqualification rules should not differ according to the court on which a judge or justice serves. Thus, much as the Michigan Code of Judicial Conduct applies to all Michigan judges and justices without regard to seniority or specific court, so too should the same substantive requirements concerning disqualification apply to all Michigan judges and justices. Different rules for different adjudicators may introduce risks of eroding public confidence in both the integrity and impartiality of the judiciary.

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[38] *Id.* at 794 (Kennedy, J., concurring).

[39] Alternative B (Proposed MCR 2.003-SC(B)(2)). Alternative B further announces that "[s]tatements or conduct by anyone other than the justice shall not be considered in assessing the impartiality of a justice . . . ." *Id.* This limitation severely restricts what evidence may be considered in assessing whether a justice's impartiality might objectively and reasonably be questioned, thus significantly undermining the protection offered by the provision as a whole.

[40] ABA Model Code of Judicial Conduct, Canon 2, R. 2.11(A)(5).

[41] *Compare* Alternative A (Proposed MCR 2.003-SC) *with* Alternative C (Proposed MCR 2.003).

To take one example: the current version of MCR 2.003 and Alternative C both provide for disqualification where a judge is biased or prejudiced for or against a party or attorney. In contrast, Alternatives A and B only extend their respective bias provisions to parties in the proceeding — not to attorneys.[42] Adoption of either Alternatives A or B would thus suggest that a Michigan justice's bias for or against an attorney is permissible and would not impact the legitimacy of that justice's decision in a case before him or her, while an equivalent bias in a Michigan judge is improper under MCR 2.003 and would affect the legitimacy of his or her work in a given case. Such divergence, without adequate justification, not only risks demeaning Michigan judges but may undermine the Michigan courts' broader commitment to dispensing fair and impartial justice.

Additional Reforms Could Strengthen Alternative C

In addition to the improvements that Alternative C would provide, we also respectfully recommend a number of other disqualification reforms the Court may wish to consider:

Special attention to cases involving campaign contributors. The recent explosion in campaign contributions and outside expenditures in judicial election campaigns and the U.S. Supreme Court's decision in *Caperton* are forcing courts to rethink when it is appropriate for a judge to hear cases involving litigants from whom the judge has received substantial campaign support. The ABA recommends mandatory disqualification of any judge who has accepted large contributions (*i.e.*, contributions over a pre-determined threshold amount) from a party appearing before him or her.[43] Various state legislatures and commissions in California, Nevada, and Washington are already considering variations of the ABA's proposal in the wake of *Caperton*,[44] and this Court may wish to follow suit. In particular, given recent trends in judicial elections, we urge the Court to consider expanding upon the ABA proposal to encompass both campaign contributions and independent campaign expenditures — and to address spending by companies and law firms affiliated with the parties or attorneys appearing before a judge.

Enhanced disclosure by litigants. Whether it is a question of a party's campaign contributions or independent expenditures, in order to make informed disqualification decisions, judges will often need information to which litigants may have much better access. Recognizing this, federal rules require that nongovernmental corporate parties appearing in federal court to file a statement identifying any parent corporation or publicly held corporation that owns a significant portion of the corporate party's stock early on in a court proceeding.[45] This

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[42] *Compare* MCR 2.003(B)(1) *and* Alternative C (Proposed MCR. 2.003(C)(1)(a)) *with* Alternative A (Proposed MCR 2.003-SC(1)) *and* Alternative B (Proposed MCR 2.003-SC(B)(1)).

[43] ABA Model Code of Judicial Conduct, Canon 2, R. 2.11(A)(4).

[44] Brennan Center for Justice, Judicial Recusal Reform in the States: 2009 Trends and Initiatives, *available at* http://www.brennancenter.org/page/-/2009DISQUALIFICATIONREFORMINSTATES.pdf.

[45] *See, e.g.*, Fed. R. Civ. P. 7.1 & advisory committee note; Fed. R. App. P. 26.1 & historical amendment notes.

Court could adopt a similar rule requiring all litigants and their attorneys to file an affidavit at the outset of litigation disclosing specific information relevant to a disqualification decision, including information about campaign contributions and independent expenditures.

Enhanced disclosure by judges. Although Michigan judges are already obligated to "raise the issue of disqualification whenever the judge has cause to believe that grounds for disqualification may exist,"[46] this Court could adopt a rule specifically requiring judges, at the outset of a case or appeal, to disclose any facts — particularly those involving personal and fiduciary economic interests, campaign statements, and campaign contributions — that might plausibly be construed as bearing on their impartiality to hear the matter. Such a disclosure scheme would increase the reputational and professional cost to judges who fail to disclose pertinent information that may later emerge from other sources.

Recusal advisory bodies. Just as many states, bar associations, and other groups have created non-binding advisory bodies to serve as a resource for candidates on campaign-conduct questions, a similar model might be followed with respect to recusal. An advisory body could identify best practices and encourage judges to set strong standards for themselves. In a model incorporating a non-binding advisory body, judges would retain the authority to rule on disqualification motions but would be encouraged to seek guidance from the advisory body before ruling. A judge relying on an advisory body's recommendation not to recuse would enjoy an extra level of public defense if a disgruntled party criticized a decision not to step aside.

Judicial education. Seminars that instruct judges on the substantive disqualification standards and enable them to confront the standard critiques of disqualification law would help judges understand and properly interpret Michigan's judiciary standards. Judges could review the use and enforcement of disqualification motions, scientific findings concerning bias, the importance of avoiding the appearance of partiality, and their own potential role in helping to reform recusal doctrines and court rules.

Increased and uniform data collection and dissemination. To increase transparency and consistency in the disqualification process, we urge the Court to collect and publish uniform data on disqualification motions and their dispositions, including the disqualification histories of individual judges. In the short term, such data would be useful to litigants who could review the disqualification history of any judge assigned to their case. In the longer term, increased data collection would facilitate meaningful analysis of the impact of specific disqualification policies in Michigan, and — as other states adopt similar measures — comparative analysis of disqualification policies across jurisdictions.

Several of these proposals, as well as additional suggestions for recusal reform, are described at greater length in the Brennan Center's report, *Setting Recusal Standards*, and in the Brennan Center's more recent analysis, *Setting Recusal Standards after* Caperton v. A.T. Massey Coal Company.[47]

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[46] Michigan Code of Judicial Conduct, Canon 3(C).

[47] Brennan Center for Justice, *Setting Recusal Standards after* Caperton v. A.T. Massey Coal Company (2009), *available at* http://brennan.3cdn.net/a6252cfe16365afbb9_sim6bxrdd.pdf.

Conclusion

To carry out their role effectively and to maintain public confidence, the courts of our constitutional democracy must keep the promise of dispensing fair and impartial justice, and must decide controversies without bias. This means that courts must work to maintain both the perception and the reality of independent, impartial justice. The articulation of clear, enforceable rules governing judicial disqualification is an important means for doing just that.

We commend the Court for its attention to these issues, and appreciate the opportunity for public comment on the alternative proposals under consideration.

Respectfully submitted,

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